Supreme Court, U.S.

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No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term, 199_

THERESA ULYAS, WILLIAM McKEEN,
JAMIE BOWERS and RAYMOND ALBERT,

Petitioners,

vs.

D. COSTA and SGT. WILLIAM THOMAS,
Members of the so-called Organized
Crime, Narcotics and Intelligence Squad
of the City of Pittsburgh Police Department,

Respondents.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED FOR REVIEW

I. If the alleged reasons for the enactment of criminal prostitution statutes no longer exist, do the natural law and/or the equal protection and privileges and immunities provisions of the fourteenth amendment and/or the speech protections of the first amendment and/or the be left alone protections of the ninth amendment and/or the reserved rights of the tenth amendment require these laws no longer be enforced?

II. If criminal Defendants request state habeas corpus in order to make an evidentiary record in support of the issues raised in Question No. 1, do the open court protections of the first amendment and/or the notice provisions of the sixth amendment and/or the due process mandates of the fifth amendment as imposed on the states by the fourteenth amendment and case law represented by authorities like U.S. v. Carotene

Products, 1938, 304 U.S. 144, 152-153, 58 S.Ct. 778, 783 and Townsend v. Sain, 1963, 372 U.S. 293, 312-313, 83 S.Ct. 745, 747 bar dismissal of the habeas corpus without the evidentiary hearing and opportunity for oral argument promised by the trial judge?

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REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS

1. The opinion of Fifth Judicial District Criminal Division Judge Robert E. Dauer is attached to this Petition and is reported in 140 PLJ 265. The Superior Court memorandum opinion is presently unreported. It is attached to this petition.

2. The appeal from Administrative Judge Dauer's November 4, 1991 order was argued on May 19, 1992 before a Superior Court Panel composed of P.J. Rowley, Judge Montemuro and Senior Judge Hester. On September 3, 1992, the appeal was quashed by an order which advised:

"Judgment

On consideration whereof, it is now ordered and adjudged by this Court that the Judgment of the Court of Common Pleas of Allegheny County be, and the same is hereby quashed. Case remanded. Jurisdiction relinquished. By the Court"

3. Petitioner's timely motion for reargument was denied on November 12, 1992 by the following order:

"ORDER OF COURT

The Court hereby denies the application filed September 14, 1992, requesting reargument or reconsideration of the decision dated September 3, 1992.

Date: November 2, 1992 Per Curiam"

4. On December 11, 1992, Petitioners filed a motion for discretionary review with the Supreme Court of Pennsylvania at No. 670 W.D. Allocatur Docket 1992. On October 5, 1993, their counsel was advised that state's highest court had entered the following order:

"Per Curiam

AND NOW, this 4th day of October, 1993, the Petition for Allowance of Appeal is hereby denied." There was no opinion.

STATEMENT OF JURISDICTION

Jurisdiction is founded upon 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment Five

No person shall be -- deprived of life, liberty or property without due process of law --

Amendment Six

In all criminal prosecutions, the accused shall enjoy the right -- to be informed of the nature and cause of the accusation --

Amendment Nine

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment Ten

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment 14, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONCISE STATEMENT OF FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

1. This appeal involves a petition for a writ of habeas corpus (1a-125a), which was denied (126a) by Administrative Judge Robert E. Dauer of the Criminal Division of the Court of Common Pleas of Allegheny County, Pennsylvania.

2. On April 16, 1991, City of Pittsburgh Police arrested Theresa Ulyas and William McKeen for various prostitution offenses (3a-7a). On April 22, 1991, the police arrested Theresa Ulyas, Raymond Albert and Jamie Bowers on the same type of charges (4a-5a; 7a-10a).

3. These four Defendants presented a petition for a writ of habeas corpus to Administrative Judge Dauer on May 28, 1991, in order to challenge their illegal restraint (1a-20a).

4. They complained that the criminal informations contained no facts (4a,

paragraph 3A(1), (2); 3B(2); 3C(1), (2); 3D; 3E(1), (2)); contain more than one crime in a single count (4a, paragraph 3B(1); 3C(37); the police conspired to entrap them, frame them, arrest them, hold them, deny them bail and generally violate the state and federal constitutions (5a-8a).

5. They claimed an illegal entry and search (6a, paragraph 4A(3), (4), (5); (6a, paragraph 4B(1), (2), (3), (4), (5)), that no crime was committed (6a, paragraph 4A(2), a pest hole detention holding facility (10a, paragraph 7; 6a-7a, paragraph 4A(6)), an intent to deny them freedom and access to counsel (6a-7a, paragraph (6); (8a-9a, paragraph 4B(6), (7), (8), (9), (10)) plus a fear of police repetition (9a, paragraph 4B(11)).

6. They claim the above experiences were to please third parties (9a, paragraph 5; 10a, paragraph 6) and that police effort should be put to a better use (10a-11a,

paragraph 8).

7. They ask a city ordinance directing fair treatment be enforced (11a-12a, Paragraphs 10, 11; 18a-20a) because it prohibits what has happened (14a-15a).

8. On May 27, 1991, A.J. Dauer issued the writ, set a hearing date and stayed all proceedings (13a).

9. On October 17, 1991 (21a-41a), Appellants filed a motion to amend. A.J. Dauer never acted on this motion (126a).

A. The motion cited a decision by Fifth Judicial District Judge Manning (23a, paragraph 1, 21a, last paragraph) that no facts is fatal and asked A.J. Dauer follow its reasoning.

B. It also claimed changed morals, society values and other conduct and opinions required prostitution no longer be a crime, especially since the purposes for which it had originally been enacted were gone and/or exposed as without foundation (paragraph 3,

23a-29a; paragraph 4, 29a-31a; paragraph 5, 31a).

C. It pointed out that the law discriminated against women, Blacks (28a, paragraph (6)) and singles (paragraph C, 30a), and its prosecution actually harms society by diverting shorthanded police forces and overburdened courts from more important needs (paragraph 4A, 29a; paragraph 5, 31a).

D. Appellants requested the issue be certified to the Pennsylvania Supreme Court, certified for interlocutory appeal or that the charges be dismissed ("Wherefore" clause, 31a) plus an evidentiary hearing (32a).

10. On October 10, 1991, Appellants filed another petition to amend (42a-46a). A.J. Dauer never formally ruled on this petition (126a). The petition requested the "natural law" be used as a vehicle to end the prosecutions.

11. On October 31, 1991, A.J. Dauer heard preliminary argument (47a-61a). He said (57a, 62a) he would first decide if the information were fatally flawed because no facts were alleged. If the facts were sufficient, he promised to hear about the other issues raised. He promised:

"THE COURT: I don't know that we have to get the constitutionality of this until we decide whether or not -- whether these warrants or these criminal complaints are any good." (57a, fifth paragraph)

X X X

"THE COURT: Before we get into all that, and having the police here and setting it down for argument, I thought that's what we were here for today, this matter of these criminal complaints. Do you want to argue that this morning now?" (62a, first paragraph)

12. On October 30, 1991, Appellants filed another petition to amend (69a-125a).

A.J. Dauer never formally ruled on this petition (126a), which cited authority Appellants believed supported their position and detailed application of the "natural law," which overrules statutes taking away rights protected by this rule.

13. On November 4, 1991, A.J. Dauer (126a) decided that "after due consideration, petition for writ of habeas corpus denied" at Misc. 372 May 1991, but made no decision about companion habeas corpus #386 June 1991, which involved the same location but Petitioners Susan Marie Zuslag, Lori Belfiore and Jay Gibson (21a, 42a, 43a, 69a), who had presented many of the same issues in another original petition.

14. After a timely appeal (127a) was filed, Appellants presented another petition to amend (128a-131a) which contained case authority they believed required A.J. Dauer to follow a previous decision of Judge Manning, who sat in his Court. A.J. Dauer

issued a rule on the District Attorney to show cause why the motion should not be granted (132a). No answer to the rule was filed.

15. On January 31, 1992 (133a-137a), Appellants filed another petition to amend, which raised First and Fourteenth Amendment issues. No decision has yet been made on this motion.

16. On February 25, 1992, in an opinion reproduced in the Appendix to this certiorari petition, A.J. Dauer explained his November 4, 1991 (126a) decision, which was confined to Appellants' case at Misc. No. 372 May 1991. He did not acknowledge the motions of January 17, 1992 (128a-131a), his January 17, 1992 (132a) unanswered rule to show cause or the January 31, 1992 (133a-137a) motion. (Opinion, page 2, second paragraph).

A. He said the factual averments were sufficient (page 2-page 5).

B. He said the other issues were

for the general assembly to decide (pages 5-6). He did not address the "natural law" or First and Fourteenth Amendment issues which Appellants had raised.

17. On March 6, 1992, Appellants filed a "Motion for Proper Pa. R.A.P. 1925(a) Opinion and for Oral Argument" (138a-143a). This paper objected to the February 25, 1992 Opinion's failure to address all the raised by Appellants issues (paragraphs 2-4, 140a-142a) and grant them the argument and evidentiary hearing promised if the lack of facts problem was decided against them (139a-140a). The trial Court set April 10, 1992, for argument (138a).

18. No additional opinion was filed and no argument heard on the proposed amendment.

19. After Petitioners had filed their brief and appendix in the Superior Court of Pennsylvania on April 8, 1992, Respondents filed a motion to quash which Petitioner's answered on April 28, 1992.

20. The case was orally argued on May 19, 1992, before a Superior Court panel composed of P.J. Rowley, Judge Montemuro and Senior Judge Hester. On September 3, 1992, the appeal was quashed as interlocutory (Opinion, page 6) with "no compelling reasons for immediate review of the order at issue." (Opinion, page 7).

21. Petitioner's September 14, 1992 "Motion for Reargument and reargument en banc" was denied November 12, 1992.

22. Petitioners' December 11, 1992 petition for discretionary review was denied without opinion on October 4, 1993.

REASONS FOR ALLOWANCE
OF WRIT OF CERTIORARI

I. IF THE ALLEGED REASONS FOR THE ENACTMENT OF CRIMINAL PROSTITUTION STATUTES NO LONGER EXIST, DO THE NATURAL LAW AND/OR THE EQUAL PROTECTION AND PRIVILEGES AND IMMUNITIES PROVISIONS OF THE FOURTEENTH AMENDMENT AND/OR THE SPEECH PROTECTIONS OF

THE FIRST AMENDMENT AND/OR THE BE LEFT ALONE PROTECTIONS OF THE NINTH AMENDMENT AND/OR THE RESERVED RIGHTS OF THE TENTH AMENDMENT REQUIRE THESE LAWS NO LONGER BE ENFORCED?

A. These issues were raised in the above described Petitions to Judge Dauer in the Trial Court, in the Superior Court Brief and in Question IV, pages 13-15, of their allocatur petition filed December 11, 1992, in the Supreme Court of Pennsylvania.

B. Petitioners argue and ask the court to agree that the prostitution statutes on which this prosecution is founded violates what has been and is called the "Natural Law" which no statute can overrule or take away.

a. Numerous commentors have been collected in an erudite September, 1977, edition of 11 Ga. Law Review #5, Volume 11, between pages 969 and 1424, where the general idea is presented and discussed and how to apply it argued.

b. At page 1360, William T.

Blackstone presented "The Relationship of Law and Morality". It appears moral law is between "Brute Law", which must be obeyed (like murder, theft, deception) and etiquette. He distinguishes between conduct which is "obliged" and that which is "an obligation" and must be rationalized and accepted.

(A) A moral rule can't be repealed but a law can (page 1364). The former can be changed by human decision and is not punished if it can be excused. They are rules which permit us to live together (1368) and punished by the community - not the executives of government (1372-3) and can change. An example of Brute Law is what was accepted under Hitler's Nazis (1376, N. 54) or slavery (1382-3).

(B) Natural law refuses to accept bad or unjust laws (1377) or those not approved by the public. However, the majority cannot oppress individuals (1384).

(C) At pages 1386-1391, the author defines "Natural Law" as included basic human rights which no government can take away. They can change as humans change (1288) and cannot be arbitrarily imposed (1389).

(D) He advises "All human beings, gua human, have certain basic needs and rights, and those rights exist independent of political society" or "utility" and unjust law is not law.

(E) He gives the definition of "Natural Law" (1385) as "There are certain universal moral principles of human conduct discoverable by reason (but also by divine revelation) to which law must conform if it is to be a valid law." It is "part of the furniture of the universe, existing independent of man's subjective preferences and capable of being known by man" and whose "ends or purposes are built into the world by the creator or by nature"

and are part of human nature. It is derived "from knowledge of nature and man's nature, universal moral norms which are a necessary foundation" to deduce it.

c. Beginning at page 1325, Noel v. Reynolds discusses "the enforcement of morals and the rule of law" and (1326) cites as examples of court's overruling anti-moral laws. Roe v. Wade, 1973, 410 U.S. 113 and Wisconsin v. Yoder, 406 U.S. 205, Memoirs v. Fanny Hill, 1966, 383 U.S. 413, and People v. Woody, 1964, CAL, 394 P.2d 813.

(A) He cites John Stuart Mills who argued the only reason for a law is to protect the public and "His own good, either physical or moral, is not sufficient warrant" and that (1333) "many violations of the sexual code are in this category, and as mores change, the boundaries of the category can also fluctuate," and that American lawyers do not believe sexual conduct is a matter for government concern (1329).

(B) The author also discusses the cost and degradation of enforcements (1348-1358) and addresses:

A. Moral prohibitions should not be permanent as "the next generation might not endorse, thus leaving the law without the strong popular backing it needs for consistent jury enforcement) (1348).

(a) He addresses adultery and fornication as examples of difficult enforcement and recalls "it is too generally regarded as a human weakness not suitably punished by imprisonment" and distinguishes the "division between crime and sin".

(b) He observes investigation of sex crimes committed with consent requires "involving unusual and highly questionable investigative techniques" which result in "contempt" and "breed disrespect for the law in general" (like in

the case where the police strip naked and have the woman do the same by the use of deceit and government money).

(c) He concludes enforcement (1354-5) increase, rather than decrease, social harm" requires police "to use legally and morally questionable investigative techniques", creates a higher black market price and generates worse and more dangerous crime like violence, corruption, bribery, extortion "thus bringing disrepute on the entire system of criminal justice" by police actions which "degrade otherwise decent human beings".

(d) David A. J. Richards, at pages 1106-1110, advises much of constitutions is founded on moral law and to protect the individual from majority rule.

(e) James W. Nickel, (1165) observes that natural law has been taken more seriously since World War II and traces back to English common law. It

gives the individual a benefit (1116-1118) independent of society as a whole and political pressure. He cites Ronald Dworkin and his argument that the unpopular individual should be protected against legislatures and judges who must respond to the political system and might not be concerned with individuals whose ideas are unpopular and have no political base. (1132-1134). He said (1140-1141) that legislation can't overrule the natural law.

(f) Edgar Baldenheimer (1143) traces the idea back to Confucius and Plato and Roscoe Pound and discusses Ronald Dworkin's observation (1152-72) that "the judiciary may fashion new rights if there is a general community consensus as to the fundamental justice of such action" (1165) and can (1166) use the Ninth Amendment as justification because this is not the creation of a new right but merely recognition of "inchoate or embryonic laws"

which were "in a state of incubation" (1170). Judges are not bound by "blind adherence to traditional patterns of thinking" (1170 and N. 140).

(g) Professor Ronald Dworkin (1201) is the main accepted advocate of natural law. Judges use "Principle" (the right of individuals to resist "Policy" (community good legislation) (1204-5) because legislatures often overlook the individual for alleged common good (1206-7).

(A) Stare decisis is based on respect for precedent which is like blind obedience to a statute (1230) passed due to political pressure (1291-2).

(B) A law might be "so unjust that it would be wrong for the judge to enforce any legal rights it supplies and right for him to lie [about what the law is] in order to avoid doing so". (1254-4)

(h) Anthony DiAmato

(1277) argues that if judges can't make law, we only need them to decide credibility and a computer can make the decision because established rules freeze what can be done (1298).

(i) Barry Hoffmaster (1303) distinguishes between a soldier's duty to kill and his lack of obligation to murder (1312) and discusses social laws from social laws that are enacted into laws. The former (like removal of a hat in church) are enforced by social pressure (1320-2) and agrees that obedience to law is not required unless the law can be justified (1323-4).

C. Professor Mark V. Tushner observes (82 Columbia L.R. 1531, 1543, N. 42) that so-called bad people now engaged in prostitution "doubtless would find some other illicit activity in which to engage" if they left prostitution so it is better to have them there (1543).

C. N.Y. Court of Appeals Chief Judge Sol Wachtlor discusses a judge's power and duty in 65 N.Y.U. Law Quarterly 1 where he observes: "The judiciary's position as permanent spectator to the constant bombardment of case law by real-world events" and advises "the mores of the day", "legal landscape", "present societal beliefs" are involved (16-19) in overruling state decisis to protect "fundamental human rights" and concludes:

(a) "When these rights are at stake, it is the courts who by necessity witness vividly the individual predicament of a particular litigant and who view starkly the real impact of the constitution upon individuals" because the legislature looks at the big picture and the judges at the individual one (page 18); and

(b) Court protect "a minimum level of dignity that must be accorded an individual" (19); and

(c) "Courts serve the function of protecting individuals; they are buffers between the state and persons, and between the powerful and the less influential" and "in a unique position to understand the plight of the individual, and to protect personal rights and freedom" and this is the "bond between the courts and a real-world dispute, and thus are the sources of the legitimacy and judicial lawmaking" (21-22).

D. Harvard Professor Lawrence H. Tribe, who has had great success in the U.S. Supreme Court, writes in 64 N.Y.U.L.R. 726, 730-1, argues that the majority should not be permitted "to force people whose sexual orientation is in the minority to live as second class citizens" (731) and lawyers have a duty to enforce this rule of "compassion".

E. 126 University of Pa. L.R. 344 (1977) recalls Justice Brandeis' dissent in Olmstead v. U.S., 1928, 277 U.S. 438, 478,

where he said "the makers of our constitution undertook to secure conditions favorable to the spirit of happiness" and "they recognized the significance of man's spiritual nature" and "they conferred as against the government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized man."

(a) The article cites J. Locke of Civil Government, 119, at page 367. Locke said (page 185) that since one man has no natural power over another, he does not give up this protection to government "but only so much as the law of nature gave him for the preservation of himself and the rest of mankind, this is all he doth, or can give up to the community, and by it to the legislative power so that the legislative can have no more than this. Their power in the utmost bounds of it is limited to the public good of society. It is a power that hath no other end but preservation."

(b) Locke continues "Nature or some other source of authority higher than positive law has established an order that man must discover and toward which he must aspire."

(c) The article then goes on to discuss similar statements of Dean Roscoe Pound and others and (page 369) concludes certain rights are insulated against majority rule.

(d) The article publishes certain statements of John Stuart Mill (367-370) who said the only reason to make immoral conduct criminal is "self protection" to prevent harm to others" and (370) "to justify that, the conduct from which is desired to deter him, must be calculated to produce evil to someone else" and "over himself, over his own body and mind, the individual is sovereign".

(e) The article discusses the English Government commissioned Wolfenden

report which concluded prostitution is none of society's business (375). The author sets as a standard "Does the conduct proscribed under this statute entail a substantial risk of direct physical, emotional, or financial harm to individuals not 'consenting' to the conduct in question.

F. Professor Morris S. Arnold, in 126 U. of Pa. L.R. 329, discusses "statutes as judgments" and "the natural law" as affected by history beginning in 13th Century Parliament.

(a) He advises that Parliament was a court which a person petitioned to solve a problem peculiar to him (333) and the decision was called a judgment which is now called a statute (Pa. had a similar procedure until Article III, Section 32, of our Constitution stopped it).

(b) Courts would ask Parliament for advice but might not consider the answer as stare decisis in a subsequent

case (339).

(c) Natural law expanded when 16th Century lawyers began closer ties to universities.

(d) An example of rejected stare decisis (340) is where a judge said a previous statute overruled a later one (340) and was called a fool.

(e) Juries apply the natural law of fairness when they refuse to convict a defendant who is technically guilty (like Mayor Barry or Colonel North).

G. Representative cases on the natural law include U.S. v. Cook, 1970, W.D.Pa. 311 P. Supp. 619-620, while refusing to apply the rule to federal draft power instructed in re the scope of the Ninth Amendment and advised "There does exist -- a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government -- especially of any free government existing

under a written constitution, to interfere with the exercise of that will" quoting from Jacobson v. Mass, 1905, 197 U.S. 11, 29 S.Ct. 358, 362, a smallpox vaccination case which does contain that quote.

1. Cook also advised (311 F.Supp. 619-620) "there are fundamental personal rights -- which are protected from abridgement by the Government though not specifically mentioned in the constitution".

2. Jacobson, at 25 S.Ct. 363, said that if any health statute "enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the court to so adjudge and thereby give effect to the constitution."

3. Petitioners also reply on the 10th Amendment which only gives power to the

states if the right has not been retained by the Federal Constitution or "the people".

4. Since there is no proof prostitution spreads disease and homosexual conduct which does is now accepted and the disease it produces financed with tax and private funds, petitioners respectfully urge the court to rule that this statute cannot pass muster as a health statute or one protecting morals or the family, especially since we now have no fault divorce, adultery and fornication are no longer crimes and homosexual conduct is a direct threat to the traditional family.

(a) Powell v. Alabama, 1932, 287 U.S. 45, 67-72, 55 S.Ct. 55, 62-65 (right to counsel) advises "there are certain immutable principles of justice inherent in the very idea of free government which no member of the union may disregard.

(b) U.S. v. Criden, 1982, C.A. 3, 675 F.2d 550, 556, instructs that the ninth

amendment protects rights not mentioned in the constitution. (There access to a preliminary hearing transcript.

(c) Thornburg v. American College of Obstetricians and Gynecologists, 1986, 106 S.Ct. 2169, 2178, 476 U.S. 747, 749 observed "the states are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies" and Pennsylvania can't intrude into this area even though there is an honest dispute over "moral values and spiritual questions" (106 S.Ct. at 2184, 476 U.S. at 771-2).

(1) The concur of Justice Stevens (106 S.Ct. at 2187, N.5, 476 U.S. at 777, N. 5) approved Charles Fried's observation that the concept of privacy embodies "the moral fact that a person belongs to himself and not others nor to society as a whole"; and

(2) The fact an idea is not shared by majority is not controlling since (N. 11,

106 S.Ct. at 2189, 476 U.S. at 781) each person has the right to decide "how he will live his own life".

(3) He opines that after observing what an apple did to Adam that a primitive society might pass a law against eating apples (106 S.Ct. at 2190, 476 U.S. at 781-2).

(e) Petitioners urge this court to rule that each woman has an absolute right to do what she wants with her body and to earn a living in any manner she chooses so long as no other person is harmed. If a man wants paid casual sex, this will do less harm to his marriage than a long term commitment required to get it free, plus the deceit, jealousy, and possible violence that may follow a serious involvement. This regulation has been passed by men in Harrisburg to force women to give away a valuable asset free. This has reduced women to second class citizens. If they can sell

their entire body and mind to an employer who buys them for the minimum wage, what logic bars selling a smaller part.

5. The court is respectfully requested to take judicial knowledge of what the legislative process has become - single interest groups, high campaign contributions which are nothing more than bribes under a more acceptable name, the corruption of the presidency by the Iran hostage and the Contra scandals plus the hiring of his two sons (see attached Time printout, the Thomas Senate fiasco, the pro and con abortion lobby, the gun lobby) and to find that natural law is even more important now to protect the individuals who do not have funds and/or time to present this pressure on passing and signing legislation.

6. The court is also asked to take judicial knowledge of changed morals, churches which used to condemn gambling conduct large scale bingo and promote tours

of Las Vegas and Atlantic City casinos for their followers, the state runs lotteries, punchboard and similar games are now legislated into acceptance, people live openly and have children without marriage and hire media experts to publicize it, children turn on their parents (usually dead) for publishers profit, investment advisors rip off old investors and receive token punishment, etc.; the state subsidizes unwed mothers.

7. The court is asked to take judicial knowledge that courts have overruled segregation, discrimination, abolished slavery, made homosexuality legal, tried war criminals, forgiven Colonel North, finally approved the New Deal of President Roosevelt after he threatened to pack the U.S. Supreme Court, rejected separate but equal and legislated for change, when the legislature and/or the executive did not have the political courage to make the changes whose

times had come.

8. This material was originally raised in Petitioners' October 30, 1991 Petition presented to the trial court and pressed in the Superior Court brief and the allocatur petition.

H. Petitioners' October 17, 1991 Petition is filed in the trial court and pressed in the Superior Court brief, and the Pennsylvania Supreme Court allocatur petition argued "The reasons that originally caused prostitution to be made a penal offense no longer exist" and then mentioned the following specifics.

1. The court is asked to take judicial notice that this area (as has the entire country) has changed from a puritan-church influenced, high moral, family oriented, conservative community to the exact opposite.

(1) Fornication and adultery have been excised from the penal code and the

conduct previously condemned is now accepted.

(2) Family loyalty and the sanctity of marriage have been undermined by no fault divorce, welfare, education subsidies like the PELL grants, repeal of support obligations between grandchildren and grandparents, responsibility to care for aged parents and illegitimate children.

(3) Personal responsibility has been undermined by the "do your own thing" theory and abuse of the bankruptcy code.

(4) Thrift and the former theory of don't spend what you don't have have been rejected by use of credit cards abused to support extravagant lifestyles by mortgage of the borrower's future.

(5) Exposure, voluntary and involuntary sexual misconduct, formerly suppressed, has become a course of easy revenue and even First Lady Nancy Reagan admitted pregnancy before marriage to the

president. The First Family of former President Reagan published books about indiscretion, public figures publish the names of former bed partners, and children publish accounts of incest with dead parents who are no longer present to deny the charges. Senator Ted Kennedy, by bare political power escaped a murder charge and is now involved in the Palm Beach charges against his nephew, congressmen admit homosexual involvements, drunkenness, bribes in the form of campaign contributions, non-payment for meals and passing N.S.F. checks, and close involvement with prostitutes.

(6) Even former President Kennedy has been exposed as a compulsive sex addict who used the White House as his playground with Frank Sinatra as his pimp and the sharing of a girlfriend with a notorious gangster to whom she carried election purchasing funds for the ex-president.

(7) High officials publicly

admit perjury after being caught and ex-President Nixon stepped down rather than face impeachment.

(8) Having children out of wedlock is now accepted as a good idea and voluntarily exposed and subsidized by government.

(9) Sex by children is encouraged and use of drugs and abandonment of self-control encouraged by the so-called corrective programs of government and new organizations created to milk this new source of funds.

(10) Church leaders have been exposed as cheats and grafters, priests convicted as child molesters, and universities exposed as thieves who cheat their governments and university officers as greedy money grabbers.

(11) Former U.S. Attorney Generals have been convicted of crimes and/or resigned under fire.

(12) Bankers have robbed their banks and sold old people worthless junk bonds.

(13) Even the wife of ex-President Ford admitted to being chemically dependent and capitalized financially on this admission. She was followed by a host of others who did the same thing.

(14) Pornography is rampant, accepted and actually subsidized by the National Endowment for the Arts.

(15) What used to be called shylocking and usury is now promoted by federal and state legislation.

(16) Judges take money and free vacations under the acceptable name of "honorariums" but do not pay tax on these benefits.

(17) So-called "civil disobedience" is financed and approved by government and tax-free organizations and various churches in order to cause continuous

turmoil (for example, abortion protesters who travel all over the country, homosexuals attacking public buildings in Los Angeles and San Francisco to protest veto of favorable to them legislation).

(18) Homosexual conduct, once universally condemned, is now promoted by government legislation.

(19) Petitioner could go on endlessly but asks the court to take judicial knowledge that almost everything that was considered unacceptable fifty years ago is now acceptable and accepted former conduct is no longer respected and is in many instances condemned.

(20) Petitioners now ask the court to take judicial notice that we now have a president who has been charged with adultery and draft dodging, which would have been an absolute bar to him being considered as a candidate when these prostitution statutes were enacted but are presently

accepted as proper standards of conduct."

(21) The October 17, 1991 Petition also advised that no venereal disease existed where Petitioners were arrested, no gambling, liquor, drugs or graft was found and no societal problems were presented.

(22) Petitioners also cited 3 Harvard Women's Law Review and said:

(a) Published surveys indicate people no longer believe prostitution is immoral or cause the problems attached to it; 3 Harvard Women's Law Review at pages 3, 18, 42-43. It is approved in England and by the United Nations (page 50) and Nevada (Page 51) and by the author (Pages 61, 63) and 70% of people asked in a published survey (see page 70) and 92% who approve a legal house of prostitution. It is considered good therapy in Sweden. (10 Harvard Women's Law Review, p. 142). 32 countries favor making it legal (10 Harvard

Women's Law Review at p. 118) and Canada has appointed a committee to make recommendations (10 Harvard Women's Law Review at N. 2. It is regulated in Australia.

(b) In application, it oppresses Women and Blacks (3 Harvard Women's Law Review at page 51, N. 30, 10 Harvard Women's Law Review at page 117) and thus might now violate the Fifth and Fourteenth Amendments to the U.S. Constitution and/or Article 1, Sections 1, 9, 25 and 26 of the Pa. Constitution.

(c) When the reasons for a law no longer exist, courts have not hesitated to reject it. Payne v. Tenn., 6/27/91, ___ U.S. ___, 111 S.Ct. 2597, 2609 and 2610 and N. 1 and 2611.

(23) The court is asked to take judicial knowledge the short handed police forces could be better employed in other areas like street crime, drug crime and general crime which is expanding at an

alarming rate.

(24) Eisenstadt v. Baird, 1972, 405 U.S. 438, 453, 92 S.Ct. 1029, 1038E (the contraceptive case). This would apply to the issue already raised that allowing married women to withhold sex until they get what they want but denying the same privilege to a prostitute not married to her prospective customer violates both federal and state constitutions (i.e., the 5th and 14th Amendments.)

(25) It appears prostitution is the only crime where payment for what you give is penalized.

(a) If the promiscuous prostitute gives the sex free, no crime has been committed even though the same alleged threats to society still exist, i.e., spread of venereal disease, break up of the family, etc.

(b) What right has the

government to legislate that women must give sex away free. If the same type of law were enacted for other services, it would be called slavery, violation of due process, confiscation without compensation.

(c) Petitioners respectfully suggest prostitution laws are actually male imposed legislation to get women's basic asset free of charge. (If a woman said no more sex without a wedding, could she be arrested for prostitution? The answer is probably yes. If it is no, has an equal protection issue been presented?)

(d) Even the churches, some of which advocated the scarlet A, have publicly proclaimed a change in morals and now advocate loose morals, single parenthood, children out of wedlock, loose teenage six, are split on abortion which used to be a felony, welcome homosexuals as church members and some even as ministers.

(e) Petitioners

respectfully urge the court to now declare that all laws in re prostitution are out of step with the times and too expensive to enforce when police and public funds and court energy and docket space more urgently needed in other areas.

I. Petitioners also cited 11 Ga. L.R. 115 in their October 22, 1991 Petition in the trial court and pressed the issue in Superior Court and the Supreme Court of Pennsylvania allocatur petition.

J. Petitioners' January 31, 1992 motion presented to the trial court and pressed in the Superior Court brief and the Pennsylvania Supreme Court allocatur petition raised the issue of free speech and said:

(1) Even if everything stated in the Criminal Complaints is true, Petitioners delivered no sex.

(2) Sanctions for speaking, even on subjects others may find objectionable, violate the First and/or

Fourteenth Amendments to the U.S. Constitution plus the Equal Protection Provision of the Fifth and Fourteenth Amendments. See, for example, Simon and Shuster, Inc. v. Members of the N.Y. State Crime Victims Board, December 10, 1991, ___ U.S. ___, 112, S.Ct. 501, 509.

K. The issue of non-application of stare decisis was pressed at all levels. See 69a-125a and 133a-137a and Question IV (pages 13-17 of Superior Court brief and paragraph No. 4, Page 6, of their reply brief and 17-18 of Supreme Court of Pennsylvania allocatur petition.

(1) They gited U.S. v. Nixon, 1974, 418 U.S. 683, 705, 36 Villanova L.R. 281, 330 and Note 137 and the concurring opinion of Justice Jackson in Youngstown Sheet and Tube Co. v. Sawyer, 1952, 343 U.S. 579, 634 (founded on same type of material used by Joseph in interpreting Pharoh's dreams) and Payne v. Tenn, 1991, ___ U.S.

___, 111 S.Ct. 2597, 2609-2611 and N. 1.

(2) They also said:

(a) Public safety and general welfare and health no longer, even if they once did, require this type of law. Com. v. Bonadio, 1980, 490 Pa. 91, 95, 415 A2d 47.

(b) According to an article on page 51 of the September 1989 Pittsburgh Magazine, Administrative Judge Robert E. Dauer concluded, inter alia, "You can not legislate people's morals" and this includes prostitution, and "It's a crime as old as the Bible, and I don't think we're going to resolve it. I don't think there is any real solution to the crime of prostitution --" and, "Why crowd up the jails with minor sex offenses when we don't have room available for murderers and rapists? It is certainly on the low end of the spectrum of serious crimes around here."

(c) The Court is also

asked to read the following:

(1) Forward: Anti-Discrimination and Constitutional Accountability (What the Bork - Brennan Debate Ignores) 105 Harvard Law Review 80, by Guido Calabresi, Dean of Yale School, who cogently lays out the vehicles available to a Court which believes a statute is no longer or/and never was justified.

(a) He discusses Judicial Supremacy as type I and the original intent and fundamental rights positions (86-91).

(b) He discusses Type II legislation against "outcasts" and the politically impotent and the power of single issue well organized minorities (91-103).

(c) He discusses (103-108) Type III, a judicial remand, to give the legislature a second look at ill-conceived, not intelligently

considered and hastily passed legislation, especially when enacted at the end of a session (as the 1972 penal code) or with vague language which hides it's real purpose or avoidance of openly facing dangerous political issues (119-122). See page 106 where Canada takes a fresh look at statutes each five years and decides if each should be re-enacted.

(d) He also discusses Type IV "Judicial Deference to the majority" (108-109) which declines a remedy.

(2) An Economic Prospective on Stare Decisis, 65 Chicago - Kent L.R. 63 by Lewis A. Kornhauser, which appears to argue that whether to apply Stare Decisis depends on the deciding Judges and how it will impact on society and how it will respond to the decision (90-92). "Changes in the World" are considered (70) and whether a wrong decision should be rejected (65).

(3) Tribute to the Honorable Ruggero J.

Aldisert, 48 University of Pittsburgh L.R. vii by Justice Brennan discusses Law "responsive to changing human needs" and (viii) "-- preservation of human dignity and freedom when men and women feel the heavy hand of government" and comments of Dean Nordenberg (page x) that a Judge "must focus openly on policy consideration as he seeks to keep the law in tune with changing societal values."

(4) Legislation

Scholarship and Pedacgy in the Post - Legal Process Era, 48 University of Pittsburgh L.R. 691 by Philip P. Frickey argues that how statutes are passed and how to interpret them should be taught in Law Schools instead of ignored and how the legislature is a "Political battlefield where" (705, 713) "the primary motivation of the legislature is to be re-elected" and not offend special interests that can defeat it's members and the theory of critical legal studies (710-

721) that argues Courts should set laws passed in this manner aside. The article summarizes the different theories used to attack improperly enacted legislation (721-725).

(5) Statutory Interpretation: Lord Coke Revisited, 48 University of Pittsburgh L.R. 733 by L.H. La Rue observes laws are the result of compromise and seldom represent the desires of the majority in the Legislature (737).

(6) Third Circuit Judge John J. Gibbons in 48 University of Pittsburgh L.R. 963, 986-987 observes Legislative supremacy was rejected in our 1776 revolution and that new Judges supply a fresh look at old decisions.

(7) Constitutional Interpretation as Political Choice, 48 University of Pittsburgh L.R. 989, 994 discusses how "interpretation" can informally amend the Constitution and how the political bias of the U.S. Supreme Court determines the decision outcome even though

they pretend what they do is controlled by the Constitution (1023-1024). It also discusses the argument of critical study scholars (992) that economic structures are controlling and that Judges take the route of "least political resistance" (994).

(8) Although its subject is homosexuality, 30 Hastings L.J. 957 has several cogent observations that apply here.

(a) The author argues that the Constitutional right of privacy cases, "Typically arise in areas where there is a strong conventional wisdom that certain conduct is morally wrong and where the justice of that wisdom is under fundamental attack" (975).

(b) He says if we reject the idea that sex is only for procreation, its regulation is no longer justified (976) and observes that humans are the only species that is ashamed of genital exposure (978-9).

(c) He observes that the majority have no right to impose their what is right sexual views on minority (982, 992) and to do so violates "basic human rights" and due process, that homosexuality is not "unnatural" and was acceptable in ancient cultures like Greece (983 and N. 116) and is no longer classified as a mental disease by the American Psychiatric Association.

(d) He advises that since one of its criticisms was that the passive parties was degraded to being a woman type (924-5), this argument must now be rejected since women are equals, and (996) the State has no right to protect straights against gays, especially if it is done as a religious idea (998) in violation of the First Amendment.

(e) He says "personal sexual autonomy" prohibits its regulation (1001-1003) and, when used as an "expression of private fantasy, release of inner tensions" and a return to childhood freedom and the choice to

do it cannot be regulated as a prohibited life style (1004).

(f) He concludes that the choice of how a person makes love is personal and a civil liberty (1006), that paternalism does not apply (1011) and (1012) it is a wrong to sacrifice sexual preference to conform as you lose your self respect "and thus reduce freedom to cowardly, servile, and fear ridden conventionalism. For many such a life is simply not worth living," and the State has no right to assume "these people are somehow real heterosexuals who must be prodded to realize their latent desires" and (1013) "-- nothing can be more important to individuals than basic life styles."

(g) Do We Have an Unwritten Constitution, Thomas C. Gray, 27 Stanford L.R. 703, 717 concludes we do and that the original framers so intended including "sexual matters" (704-705), and Roe v. Wade is an example (707-710). He

discusses "natural law" and a "higher law," which existed before the Constitution and were intended to continue (714-716) and be judicially enforced. He concludes (717), "To summarize, there was an original understanding both implemented and textually expressed, that unwritten higher law principles had constitutional status".

(h) Petitioners respectfully suggest no male legislature has any legitimate right to order them to give their sex away free under penalty of prison if they do not and (as the author says) (1014), they have "-- the right to create their own lives on terms that are fair to all," and it is good to leave people free to experiment with different lifestyles, and just because others want to play it safe and conform is no reason to criminally penalize "varieties of human sexual arrangements," and (1018) they have a 9th and 14th Amendment right to live a life of their own.

(9) Thus, Petitioners urge the Court to use its decision making power and not avoid it by sending them to the General Assembly where they have no lobbyist, political power or money or anything else to trade in return for no longer being members of an "outcast group".

II. IF CRIMINAL DEFENDANTS REQUEST STATE HABEAS CORPUS IN ORDER TO MAKE AN EVIDENTIARY RECORD IN SUPPORT OF THE ISSUES RAISED IN QUESTION NO. 1, DO THE OPEN COURT PROTECTIONS OF THE FIRST AMENDMENT AND/OR THE NOTICE PROVISIONS OF THE SIXTH AMENDMENT AND/OR THE DUE PROCESS MANDATES OF THE FIFTH AMENDMENT AS IMPOSED ON THE STATES BY THE FOURTEENTH AMENDMENT AND CASE LAW REPRESENTED BY AUTHORITIES LIKE U.S. v. CAROTENE PRODUCTS, 1938, 304 U.S. 144, 152-153, 58 S.Ct. 778, 783 AND TOWNSEND v. SAIN, 1963, 372 U.S. 293, 312-313, 83 S.CT. 745, 747 BAR DISMISSAL OF THE HABEAS CORPUS WITHOUT THE EVIDENTIARY HEARING AND OPPORTUNITY FOR ORAL

ARGUMENT PROMISED BY THE TRIAL JUDGE?

A. This issue was raised in Petitioners' material in the trial court, in their Superior Court Brief and on Pages 25-29, Paragraphs 15-17 of their December 11, 992 allocatur petition in the Pennsylvania Supreme Court. They argue:

(1) Petitioners have an absolute right to an evidentiary hearing to show the factors that may originally have justified a penal statute punishing prostitution related offenses no longer exist. U.S. v. Carotene Products, 1938, 304 U.S. 144, 152-153, 58 S.Ct. 778, 783; N.Y. State Club Assn., Inc. v. City of N.Y., 1988, 108 S.Ct. 2225, 2236, 487 U.S. 1, 17; Schumacher v. Nix, June 3, 1992, C.A. 3, 965 F.2d 1262, 1271 ("And even under rational basis review," "the constitutionality of a statute predicated upon the existence of a particular state of fact smay be challenged by showing to the Court that these facts have ceased to exist," citing Carotene; Heiser v.

Ryan, 1991, C.A. 3, 951 F.2d 559, 561 (If state habeas corpus alleges sufficient for relief, Court must grant opporunity to prove it; Judge Diamond reversed).

(2) Petitioners' "Petition to Amend Petition for Writs of Habeas Corpus" (23a-32a) details the societal changes that have taken place since this prostitution statute was enacted in 1972 in its paragraph 3 (24a-29a) and argue in paragraphs 4-5 (29a-31a) why this old legislation should now be removed from the Penal Code.

a. They argue (paragraph 4A (29a), "The Court is asked to take judicial knowledge the short handed police forces could be better employed in other areas like street crime, drug crime and general crime which is expanding at an alarming rate;" and

b. In paragraph 4E (31a), "Even the churches, some of which advocated the Scarlet A, have publicly proclaimed a

change in morals and now advocate loose morals, single parenthood, children out of wedlock, loose teenage sex, are split on abortion which used to be a felony, welcome homosexuals as church members and some even as ministers;" and

c. "Petitioners respectfully urge the Court to now delcare that ~~rail~~ ALL laws in re prostitution are out of step with the times and too expensive to enforce, when police and the public funds and court energy and dockets are more urgently needed in other areas."

(3) If Petitioners are not given an evidenitary hearing now, they will have no opportunity to have this issue decided. The Trial Judge will be barred from considering it because to do so will overrule A.J. Dauer, a judge of at least equal jurisdiction. Yudacufski v. Com., D.O.T., 454 A.2d 923, 926, 499 Pa. 665.

CONCLUSION

If there was any pre-November 3, 1992 doubt about the public's rejection of old sexual morals conduct, the election of Candidate Bill Clinton should have resolved it. The voters were obviously unconcerned with whether he had cheated on his wife.

Magic Johnson, who boasts he has made love to 20,000 women and now says he has aids was made a national hero and a role model for our youth because of it.

Homosexuals and lesbians have obtained an "elite" status by confrontation and political contributions and now appear to have an absolute right to serve in the military.

With the present crush of cases in our state Courts, plus the lack of money and manpower to process them in the traditional manner, Petitioners respectfully urge this ~~state's~~ NATION'S highest Court to grant review and eliminate prostitution from the Criminal

Code.

It has the power to achieve this result as has the United States Supreme Court when it disagrees with a decision of a previous court for whatever the reasons may be. See "The Role of President in Constitutional Decision and Theory" by Marshall J. Gerhardt, 60 Georgetown L.R. 68.

Respectfully submitted,

Allen N. Brunwasser
Attorney for Petitioners

APPENDIX

Appeal from the Order Entered November 4, 1991, in the Court of Common Pleas of Allegheny County, Criminal Division, at No. Misc. 371 May 1991

BEFORE: ROWLEY, P.J., MONTEMURO and HESTER, J.

MEMORANDUM: Date: September 3, 1992

Theresa Ulyas, William McKeen, Jamie Bowers, and Raymond Albert appeal from the November 4, 1991 order denying them habeas corpus relief. We quash.

The record indicates the following. The complaints initiating criminal prosecutions against appellants herein contain the following allegations. William McKeen was charged with committing the following acts in Pittsburgh on or about April 16, 1991:

> The actor promoted prostitution by owning, controlling, managing, supervising, or otherwise keeping a house of prostitution or prostitution business alone or in association with others, said house or business being at 801 LIBERTY AVENUE, 3RD FLOOR, in violation of Section 5902(b)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 5902(b)(1).

> The actor promoted prostitution by procuring a prostitute for a patron, namely DET. A. PISTELLA in violation of Section 5902(b)(5) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 5902(b)(5).
>
> The actor, with the intent of promoting or facilitating the crime of PROSTITUTION, conspired and agreed with CARRIE FITZ that they or one or more of them would engage in conduct constituting such crimes, and in furtherance thereof did commit the overt act of PROVIDING AND ACTING AS A PROSTITUTE FOR A CLIENT, in violation of Section 903(a)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 903(a)(1)."

Reproduced Record at 144a.

Raymond Albert was charged with committing the following acts on or about April 22, 1991, in Pittsburgh:

> The actor promoted prostitution by owning, controlling, managing, supervising, or otherwise keeping a house of prostitution or prostitution business alone or in association with others, said house or business being at 801 LIBERTY AVENUE, in violation of Section 5902(b)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 5902(b)(1).

> The actor, with the intent of promoting or facilitating the crime of PROMOTING PROSTITUTION; conspired and agreed with JAMIE BOWERS AND THERESA ULYAS that they or one or more of them would engage in conduct constituting such crime or crimes, and in furtherance thereof did commit the overt act of ACCEPTING MONEY IN EXCHANGE FOR SEX, in violation of Section 903(a)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 903(a)(1).

Id. at 148a.

Jamie Bowers's information charged him with committing the following acts in Pittsburgh on or about April 16, 1991:

> The actor promoted prostitution by owning, controlling, managing, supervising, or otherwise keeping a house of prostitution or prostitution business alone or in association with others, said house or business being at 801 LIBERTY AVENUE, in violation of Section 5902(b)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 5902(b)(1).
>
> The actor, with the intent of promoting or facilitating the crime of PROMOTING PROSTITUTION; conspired and agreed with RAYMOND ALBERT AND THERESA ULYAS that they

> or one or more of them would engage in conduct constituting such crime or crimes, and in furtherance thereof did commit the overt act of ACCEPTING MONEY IN EXCHANGE FOR SEX, in violation of Section 903(a)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 903(a)(1).

Id. at 147a.

Theresa Ulyas, a/k/a Carrie Fitz, was charged with committing the following acts on or about April 22, 1991, in Pittsburgh:

> The actor promoted prostitution by owning, controlling, managing, supervising, or otherwise keeping a house of prostitution or prostitution business alone or in association with others, said house or business being at 801 LIBERTY AVENUE, in violation of Section 5902(b)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 5902(b)(1).
>
> The actor, with the intent of promoting or facilitating the crime of PROMOTING PROSTITUTION; conspired and agreed with JAMIE BOWERS AND RAYMOND ALBERT that they or one or more of them would engage in conduct constituting such crime or crimes, and in furtherance thereof did commit the overt act of ACCEPTING MONEY IN EXCHANGE FOR SEX, in violation of Section

> 903(a)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 903(a)(1).

Id. at 146a.

Ms. Ulyas also was charged with committing the following acts on or about April 16, 1991, in Pittsburgh.

> The actor engaged in sexual activity as a business in violation of Section 5902(a)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 5902(a)(1).
>
> The actor, with the intent of promoting or facilitating the crime of PROSTITUTION, conspired and agreed with WILLIAM MCKEEN that they or one or more of them would engage in conduct constituting such crime or crimes, and in furtherance thereof did commit the overt act of PROVIDING AND ACTING AS A PROSTITUTE FOR A CLIENT, in violation of Section 903(a)(1) of the Pennsylvania Crimes Code, Act of December 6, 1972, 18 Pa. C.S. Section 903(a)(1).

Id. at 145a.

Prior to scheduled preliminary hearings in the above cases, appellants filed a consolidated petition for writ of habeas

corpus on May 28, 1991, in the Court of Common Pleas of Allegheny County, Criminal Division, at miscellaneous docket number 372 May 1991. They requested habeas corpus relief based on the allegation that the indictments were not sufficient to inform them of the crimes they committed and to enable them to prepare a defense to the charges. The Honorable Robert E. Dauer issued a stay until June 7, 1991, when a hearing on the writ of habeas corpus was to be held.

The hearing was postponed several times, and on October 17, 1991, appellants filed an amended petition for writ of habeas corpus. In the amended petition, they requested the court to remove the penal provisions of the laws of this Commonwealth prohibiting prostitution because the outlawing of prostitution is based on antiquated concepts of morality and since prosecution of prostitution is an unnecessary drain on

public funds. A hearing was held on October 31, 1991, and this appeal followed the November 4, 1991 denial of habeas corpus relief.

On appeal, appellants request habeas corpus relief on the following grounds: 1) the criminal complaints should be quashed as they do not sufficiently advise appellants what specific conduct they performed that violates the statutes involved; 2) the trial court erred in determining that the informations were sufficient as that decision is inconsistent with the decisional law of this Commonwealth; 3) the trial court erred in failing to grant an evidentiary hearing on the petition for writ of habeas corpus and for failing to allow further oral argument on the petition; and 4) the criminal prosecutions should be dismissed based upon application of "natural law," which would compel the conclusion that prostitution should no longer be outlawed in the

Commonwealth.

Ordinarily, all pretrial orders are considered interlocutory, nonappealable orders. Commonwealth v. Bennett, 236 Pa. Super. 509, 345 A.2d 754 (1975). There are few exceptions to this rule. An order denying a pretrial motion to dismiss on grounds of double jeopardy is final and appealable, Commonwealth v. Winter, 324 Pa. Super. 258, 471 A.2d 827 (1984), due to the policy considerations underlying the double jeopardy provision that the defendant not be tried twice for the same conduct. For the same reason, interlocutory appeals are allowed from orders denying relief under 18 Pa. C.S. Section 110, which sets forth criteria for determining when a prosecution for one offense is barred by a previous prosecution for a different offense. Commonwealth v. Dozier, 333 Pa. Super. 188, 482 A.2d 236 (1984). In the present case, however, none of the enumerated grounds for

habeas corpus relief involve either the double jeopardy provision of the United States Constitution or 18 Pa. C.S. Section 110.

In Commonwealth v. Hess, 489 Pa. 580, 414 A.2d 1043 (1980), our Supreme Court evaluated the propriety of defense appeals from adverse pretrial rulings. The Court ruled that a defendant may not take an immediate appeal from pretrial orders in the absence of a showing of exceptional circumstances. In that case, the Court concluded that an order denying a motion to quash an information based upon the Commonwealth's alleged failure to establish a prima facie case at the preliminary hearing was interlocutory, in the absence of exceptional circumstances. See also Commonwealth v. Burkett, 352 Pa. Super. 350, 507 A.2d 1266 (1986) (there must be a compelling need for the grant of appellate relief to sustain the allowance of an appeal

by a defendant from a pre-trial order denying him relief.)

In the present case, we conclude that appellants present no compelling reason for immediate review and have not established the existence of exceptional circumstances. As a review of the criminal complaints clearly shows, they are not so fatally deficient as to completely deprive appellants of the ability to adequately prepare a defense to the charges.

As to the allegation of lack of opportunity to be heard on the merits of the habeas corpus petition, it clearly is meritless, as the trial court held oral argument on the petition. Finally, we have upheld the constitutionality of 18 Pa. C.S. Section 5902, Commonwealth v. Cohen, 371 Pa. Super. 558, 538 A.2d 582 (1988), Commonwealth v. Robbins, 358 Pa. Super. 225, 516 A.2d 1266 (1986), and thus, do not have the power to ignore its provisions. As there are no

compelling reasons for immediate review of the order at issue, the appeal is quashed.

Appeal quashed. Case remanded.

Jurisdiction relinquished.

OPINION

Petitioners, William McKeen, Jamie Bowers, Theresa Ulyas and Raymond Albert appeal from an order of this court dated November 4, 1991 denying Habeas Corpus Relief. Their cases are consolidated under Miscellaneous Number 386 June, 1991. Each of the petitioners are represented by Allen Brunwasser, Esquire.

All petitioners were arrested by City of Pittsburgh police officers at 801 Liberty Avenue, Pittsburgh, the address of Roman V. Inc. All of the charges allege violations of the Pennsylvania Crimes Code.

William McKeen was arrested on April 16, 1991 and charged at OTN-C-6122351 with Promoting Prostitution, 5902 (b)(1) and Criminal Conspiracy 903 (a)(1).

Theresa Ulyas was arrested on April 16, 1991 and charged at OTN-C-6122362 with Prostitution 5902 (a)(1) and Criminal

Conspiracy 903 (a)(1). She was arrested again on April 22, 1991 and charged at OTN-C-6126293 with identical offenses.

James Bowers was arrested on April 22, 1991 and charged at OTN-C-6126271 with Promoting Prostitution 5902 (b)(1) and Criminal Conspiracy 903 (a)(1).

Raymond Albert was arrested on April 22, 1991 and charged at OTN-C-612682 with Promoting Prostitution 5902 (b)(1) and Criminal Conspiracy 903 (a)(1).

Preliminary hearings were scheduled for each of the petitioners charged. However, Attorney Brunwasser, on their behalf, filed a Petition for Writ of Habeas Corpus on May 28, 1991. A Petition to Amend the First Petition was filed on October 16, 1991. On October 22, 1991, a second Motion to Amend Petition for Writ of Habeas Corpus was filed and, on October 30, 1991, yet another Petition to

Amend the Petition for Writ of Habeas Corpus was filed.

None of the scheduled preliminary hearings took place. On October 31, 1991, the matter came before this court for argument. It was taken under advisement and, four days later, on November 4, 1991 an order was entered denying petitioner's Habeas Corpus Relief.

On appeal, petitioners assert the criminal complaints against them are insufficient to advise them of the nature of the offense for which they have been charged and, therefore, the lower court erred in not granting Habeas Corpus Relief. At the hearing on October 31, 1991, argument with regard to the criminal complaint issued to one petitioner, William McKeen, provided an exchange as follows:

> The Court: How could this be more explicit? That on or about, whatever date, April 16, the actor, with the intent of promoting and facilitating the crime of prostitution conspired and agreed with William McKeen, they or more

or one of them were engaged in an act constituting the crime of prostitution.

Mr. Brunwasser: That is no fact.

The Court: Providing and acting as a prostitute for the client.

Mr. Brunwasser: They have to put in, if Your Honor please, the facts. It would be like they would charge me with --

The Court: That is a fact. Acts of prostitution.

Mr. Brunwasser: No. Your Honor, they have to tell why. They have to say, this is what they did. They say they acted in prostitution. They have to put in what they did. It would be like they would accuse me of prostitution without any facts. That comes within, if I may suggest, a case decided by Judge Manning, which Your Honor says he finds a good case and also the Smoots case --

The Court: They don't have any facts about prostitution in here?

Mr. Brunwasser: Nothing. Under the rules, Your Honor, and I have cited the rule of criminal procedure, they must put in facts. You can't charge somebody, John Smith committed armed robbery on April 10, 1989 and they want the person to go to trial. There were three cases I have cited that say that isn't enough. They have to say what the person did.

The Court: Under the Honorable Jeffrey A. Manning's opinion, which I

> agree with, why, that had to do with the warrant.[1]
>
> Mr. Chontos: That's right, Your Honor.
>
> Mr. Brunwasser: Your Honor, the idea is the same, and the Smoots case which has just been reported in the advance sheets says it was on a criminal information, it says there must be facts; ... (HT 6-8).

The case referred to by Attorney Brunwasser is Commonwealth of Pennsylvania v. Smouse, 594 A.2d 666 (Pa. Super. 1991). There, defendant Smouse asserted the complaint against him failed to set forth facts with sufficient detail to advise him of the nature of the charges against which he had to defend. That complaint accused Smouse of committing the offense of Criminal Homicide on a specific date while acting in concert with a specific individual. It also stated that defendant knowingly, recklessly or negligently caused the victim's death by beating him about the head and neck. Our

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[1] The Honorable Jeffrey A. Manning is a Judge si
Court of Common Pleas of Allegheny County, Criminal D

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Superior Court in upholding the validity of the criminal complaint stated:

> While it is clear that a criminal complaint need not set forth the facts relating to an offense with the particularity of an indictment, see Commonwealth v. Taraschi, 327 Pa. Super. 179, 475 A.2d 744 (1984); Commonwealth v. Wilkinson, 278 Pa. Super. 490, 420 A.2d 647 (1980), a minimum amount of detail is required. According to Pa. R.Crim. P. 132(6)(a), that is sufficient to advise the defendant of the nature of the offense charged. However, neither the statute allegedly violated nor the evidence demonstrating such violation need be set forth. Id. Furthermore, a citation to the statute in question, by itself, is insufficient to support a complaint. Id. Commonwealth v. Smouse, Supra at 668.

The court further stated that, although the complaint did not identify the specific situs or exact time of the killing, "... or facts supporting a conclusion that appellant committed the offense in the manner described, there can be no question that by the information set forth, it generally advised appellant of the nature of the crime for which he was charged." Smouse, Supra at 668.

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In the instant case, the criminal complaints contained more than a minimum amount of detail. Each complaint clearly contains a summary of facts sufficient to advise each petitioner of the nature of the offense charged. For example, the complaint against Jamie Bowers states that on April 22, 1991, in Pittsburgh, Pennsylvania:

> The actor promoted prostitution by owning, controlling, managing, supervising or otherwise keeping a house of prostitution or prostitution business alone or in association with others, said house or business being at 801 Liberty Avenue, in violation of Section 5902(b)(1) of the Pennsylvania Crimes Code...
>
> The actor, with the intent of promoting or facilitating the crime of Promoting Prostitution, conspired and agreed with Raymond Albert and Theresa Ulyas that they or one or more of them would engage in conduct constituting such crime or crimes, and in furtherance thereof did commit the overt act of accepting money in exchange for sex, in violation of Section 903(a)(1) of the Pennsylvania Crimes Code...

The criminal complaints charging the three remaining petitioners are similarly stated. A reading of those complaints satisfies this

court that, here, petitioners' claims of error are without merit.

Petitioners also assert that the charges against them should be dismissed because of the existence of a general moral laxity and decay prevailing through the country. Petitioners urge that their conduct, under the circumstances, is acceptable and, therefore, the court should remove prostitution offenses from the Pennsylvania Crimes Code. This function, of course, belongs to the Legislative Branch of government rather than the courts.

For the reasons stated herein, Habeas Corpus Relief was properly denied petitioners.

Date: Feb. 29, 1992 /s/ Robert E. Dauer, J.

Supreme Court, U.S.

(2)

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OFFICE OF THE CLERK

No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1993

THERESA ULYAS, WILLIAM McKEEN,
JAMIE BOWERS and RAYMOND ALBERT,

Petitioners,

vs.

D. COSTA and SGT. WILLIAM THOMAS,
Members of the so-called Organized
Crime, Narcotics and Intelligence Squad
of the City of Pittsburgh Police Department,

Respondents.

PETITIONERS' ADDITIONAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF PENNSYLVANIA

Allen N. Brunwasser
Attorney for Petitioners

P.O. Box 22212
Pittsburgh, PA 15222
(412) 391-0329

In the Superior Court of Pennsylvania
Sitting at Pittsburgh

November 12, 1992

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA. 15222

In Re: Commonwealth of Pennsylvania, ex rel
vs. D. Costa, et al
No. 1963 Pittsburgh 1991

Dear Mr. Brunwasser:

The Court has entered the following Order on the Application for Reargument in the above-captioned matter:

"ORDER OF COURT

The Court hereby denies the application filed September 14, 1992, requesting reargument or reconsideration of the decision dated September 3, 1992.

Date November 12, 1992

PER CURIAM"

Very truly yours,

Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV/ejf
cc: Clair C. Capristo, Esquire

In the Supreme Court of Pennsylvania
Western District

October 5, 1993

Allen N. Brunwasser, Esquire
P.O. Box 22212
Pittsburgh, PA 15222

In Re: Commonwealth of Pennsylvania, ex rel. Theresa Ulyas, William McKeen, Jamie Bowers and Raymond Albert v. D. Costa and Sgt. William Thomas, Members, etc.
No. 0670 W.D. Allocatur Docket 1992

Dear Mr. Brunwasser:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above captioned matter:

"PER CURIAM
AND NOW, this 4th day of October, 1993, the Petition for Allowance of Appeal is hereby denied."

Very truly yours,

Irma T. Gardner
Deputy Prothonotary

ITG:dal
cc: Clair C. Capristo, Esq.
Deputy District Attorney
Honorable Robert E. Dauer, AJ

RECEIVED
October 8, 1993
Supreme Court
Western District